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Nos. 83-141, 83-283

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

HAWAII HOUSING AUTHORITY, *et al.*,

Appellants,

—v.—

FRANK E. MIDKIFF, *et al.*,

Appellees.

KAHALA COMMUNITY ASSOCIATION, INC., *et al.*,

Appellants,

—v.—

FRANK E. MIDKIFF, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES
COURT OF APPEALS FOR THE NINTH CIRCUIT

SUPPLEMENTARY JOINT APPENDIX

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Appeal No. 83-141 Docketed July 28, 1983;
Appeal No. 83-283 Docketed August 16, 1983.

Probable Jurisdiction Noted and Cases Consolidated October 31, 1983.

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Sample Land Lease Form

(Exhibit "B" to the Complaint filed in the United States District Court for the District of Hawaii on February 28, 1979)

FHA FORM NO. 2372H (Rev. 2/67)
VA FORM NO. 26-64506

LEASE

THIS INDENTURE, made this _____ day of _____, 19____, by and between

hereinafter called "Lessor," of the first part, and

whose residence and post-office address is

hereinafter called "Lessee," of the second part,

WITNESSETH: That Lessor, in consideration of the rent hereinafter reserved and of the covenants herein contained and on the part of the Lessee to be observed and performed, does hereby demise and lease unto Lessee, and Lessee does hereby accept and rent:

SUBJECT to all easements shown on the map (if any) hereto attached or above referred to, and reserving unto Lessor within said easements rights-of-way and the right to grant to any public utility or governmental authority such rights-of-way over, across and under said easements for lines and other transmission facilities and appurtenances for electricity, gas, telephone, water, sewer, drainage and similar public services and utilities, and the right to enter for such purposes and to repair such facilities and to trim any trees in the way of such lines.

TO HAVE AND TO HOLD the same, together with the rights, easements, privileges and appurtenances thereunto belonging or appertaining, unto Lessee for the term of fifty-five (55)

years commencing on the _____ day of _____, 19____, subject to extension as herein provided, Lessee yielding and paying therefor unto Lessor in equal semiannual payments each in advance on the first day of _____ and _____ in each and every year during said term, provided that the first payment thereof shall be prorated to the next rental due date and paid upon the execution hereof, rent of $_____ per annum for and during the first _____ years of said term, and such annual rent for and during the remaining period of said term as shall be determined by mutual agreement of Lessor and Lessee or, if they fail to reach such agreement at least 90 days before the commencement of said period, by appraisal as hereinafter provided.

AND LESSOR hereby covenants with Lessee that upon payment of the rent as aforesaid and upon observance and performance of the covenants by Lessee hereinafter contained, Lessee shall peaceably hold and enjoy said premises for the term hereby demised without hindrance or interruption by Lessor or any other person or persons lawfully claiming by, through or under it except as herein expressly provided.

AND LESSEE hereby covenants with Lessor as follows:

1. PAYMENT OF RENT. Lessee will pay or cause to be paid said rent in lawful money of the United States of America at the times and in the manner aforesaid, without any deduction and without any notice or demand, at the office of Lessor or its duly designated agent.

2. PAYMENT OF TAXES AND ASSESSMENTS. Lessee will pay or cause to be paid at least ten days before the same become delinquent all real property taxes and assessments of every description to which said premises or any part thereof or any improvement thereon, or Lessor or Lessee in respect thereof, are now or may during said term be assessed or become liable, whether assessed to or payable by Lessor or Lessee, except that such taxes shall be prorated between Lessor and Lessee as of the dates of commencement and expiration respectively of said

term; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, Lessee shall be required to pay only such installments together with interest as shall become due and payable during said term.

3. PAYMENT OF RATES AND OTHER CHARGES. Lessee will pay before the same become delinquent all charges, duties, rates and other outgoings of every description to which said premises or any part thereof or any improvement thereon, or Lessor or Lessee in respect thereof, may during said term be assessed or become liable for electricity, gas, refuse collection, telephone, sewage disposal, water or any other utilities or services, whether made by governmental authority or public or community service company and whether assessed to or payable by Lessor or Lessee.

4. IMPROVEMENTS REQUIRED BY LAW. Lessee will at his own expense during the whole of said term make, build, maintain and repair all fences, sewers, drains, roads, curbs, sidewalks and parking areas which may be required by law to be made, built, maintained and repaired upon or adjoining or in connection with or for the use of said premises or any part thereof.

5. OBSERVANCE OF LAWS. Lessee will at all times during said term keep said premises in a strictly clean and sanitary condition and observe and perform all laws, ordinances, rules and regulations now or hereafter made by any governmental authority for the time being applicable to said premises or any improvement thereon or use thereof, and all recorded protective covenants and restrictions affecting said premises, and will indemnify Lessor against all actions, suits, damages, and claims by whomsoever brought or made by reason of the nonobservance or nonperformance of said laws, ordinances, rules and regulations or of this covenant.

6. REPAIR AND MAINTENANCE. Lessee will at his own expense from time to time and at all times during said term well and substantially repair, maintain, amend and keep all

buildings and improvements now or hereafter built on the demised land with all necessary reparations and amendments whatsoever in good order and condition, except for damage by unavoidable casualty not herein required to be insured against, and maintain and keep said premises and all adjacent land between any street boundary of said premises and the established curb or street line in a neat and attractive condition.

7. INSPECTION. Lessee will permit Lessor and its agents at all reasonable times during said term to enter said premises and examine the state of repair and condition thereof, and will repair and make good all defects required by the provisions of this lease to be repaired by Lessee, of which notice shall be given by Lessor or its agents, within 30 days after the giving of such notice.

8. RESIDENTIAL USE. Lessee will use and allow the use of said premises only for residential purposes, and will not at any time during said term, erect, place, maintain or allow on said premises more than one single-family dwelling (exclusive of outbuildings), nor keep or allow to be kept on said premises any livestock, poultry or rabbits, nor use or allow the use of any building or structure on said premises as a tenement house, rooming house or apartment house or for or in connection with the carrying on of any business or trade whatsoever.

9. BOND. Lessee will before commencing construction of any improvement on said premises deposit with Lessor a bond or certificate thereof naming Lessor as an obligee, in a penal sum not less than one-half of the cost of such construction and with a responsible corporate surety authorized to do business in Hawaii, guaranteeing the completion of such construction free and clear of all mechanics' and materialmen's liens.

10. SETBACK LINES. Lessee will observe any setback lines affecting said premises as shown on the map (if any) hereto attached or herein mentioned in the description of said premises, and will not erect, place or maintain any building or structure whatsoever except approved fences or walls between any street boundary of said premises and the setback line along

such boundary nor maintain any hedge of a greater height than four feet above the ground level between such setback line and street boundary.

11. INSURANCE. Lessee will at his own expense at all times during said term keep all buildings now or hereafter erected on the demised land insured against loss or damage by fire with extended coverage in a responsible insurance company authorized to do business in Hawaii, in an amount as near as practicable to the replacement cost thereof, in the joint names of Lessor, Lessee and mortgagee (if any) as their interests may appear, payable in case of loss to the mortgagee (if any) or in the absence of any mortgage to Lessor and Lessee as their interests may appear, and will pay all premiums thereon when due and from time to time on request therefor deposit with Lessor a true copy or certificate of such current insurance policy, and any money derived therefrom in case of loss shall be held in trust in Hawaii and be immediately available to and used as soon as reasonably possible by Lessee for rebuilding, repairing or otherwise reinstating the same buildings in a good and substantial manner according to the plan and elevation of the buildings so destroyed or damaged or such modified plan as shall be previously approved in writing by Lessor; provided, however, that in case the main dwelling on said premises shall be destroyed by any casualty during the last ten years of the term hereof, Lessee may at his option cancel this lease by giving written notice thereof to Lessor within 30 days after such casualty on condition that before such cancellation becomes effective Lessee shall remove all remains of the damaged buildings and pay to Lessor a sum of money equal to the then present worth of the unearned annual rent for the remainder of said term calculated by compound interest discount at the interest rate the prevailing in Honolulu for residential real estate mortgage loans, and in case said dwelling shall be destroyed by any casualty at any time during said term, if such restoration thereof shall be prevented by law, Lessee may at his option cancel this lease by giving written notice thereof to Lessor at any time thereafter on condition that Lessee shall before such cancellation becomes effective remove all remains

of the damaged buildings and pay to Lessor all rent then accrued hereunder and taxes for the full current year, and upon either such cancellation all insurance proceeds shall be payable to and be the property of Lessee and mortgagee (if any) as their interests may appear; provided, further, that during such period as the Department of Housing and Urban Development or Veterans Administration shall own this lease all provisions of this lease requiring insurance and restoration of buildings which are substantially destroyed shall be inoperative, but such Administration shall promptly remove all remains of any damaged buildings not restored in accordance with said provisions.

12. LESSOR'S COSTS AND EXPENSES. Lessee will pay to Lessor on demand all costs and expenses including reasonable attorneys' fees incurred by Lessor in enforcing any of the covenants herein contained, in remedying any breach by Lessee of said covenants, in recovering possession of said premises, in collecting any delinquent rent, taxes or other charges hereunder payable by Lessee, or in connection with any litigation commenced by or against Lessee in which Lessee is found to be at fault and to which Lessor without any fault on its part shall be made party.

13. INDEMNITY. Lessee will indemnify and hold Lessor harmless against all claims and demands for loss or damage, including property damage, personal injury and wrongful death, arising out of or in connection with the use or occupancy of said premises by Lessee or any other person claiming by, through or under Lessee, or any accident or fire on said premises, or any nuisance made or suffered thereon, or any failure by Lessee to keep said premises in a safe condition, and will reimburse Lessor for all its costs and expenses including reasonable attorneys' fees incurred in connection with the defense of any such claims, and will hold all goods, materials, furniture, fixtures, equipment, machinery and other property whatsoever on said premises at the sole risk of Lessee and hold Lessor harmless for any loss or damage thereto by any cause whatsoever.

14. CONSTRUCTION OF IMPROVEMENTS. Lessee will not erect or place on said premises any building or structure including fences and walls, nor make any additions or structural alterations to any building thereon, except in accordance with plans and specifications including a detailed plot plan, which shall be prepared by a licensed architect if so required by Lessor, first submitted by Lessee and approved in writing by Lessor, and will landscape said premises suitably for the neighborhood, and will, unless the same is already built, at his own expense within the first _____ months of said term construct and complete on the demised land a single-family dwelling which (exclusive of garage and outbuildings) shall contain enclosed floor area at least _____ square feet.

15. WASTE AND UNLAWFUL USE. Lessee will not make or suffer any strip or waste or unlawful, improper or offensive use of said premises or use said premises for or in connection with the manufacture, sale, storage or keeping for sale or barter of any narcotics or alcoholic beverage or liquors.

16. LIENS. Lessee will indemnify and hold Lessor harmless against all liens, charges and encumbrances and all expenses in connection therewith including attorney's fees, with respect to said premises or any improvements thereon, which may result from any act or neglect of Lessee.

17. SURRENDER. At the end of said term, or other sooner determination of this lease Lessee will peaceably deliver up to Lessor possession of the demised land, together with all erections and improvements upon or belonging to the same, by whomsoever made, in good repair, order and condition except as aforesaid; provided, however, that if not then in default hereunder Lessee may within 30 days after such termination remove all buildings standing thereon.

AND IT IS HEREBY MUTUALLY AGREED by and between the parties hereto as follows:

A. EXTENSION. From time to time during the first twenty years of the term hereby demised Lessee shall have the right to

extend said term to an extended term of fifty-five years commencing on the first day of the calendar month in which Lessee gives written notice thereof to Lessor, subject to the following conditions:

(i) The unexpired term of the lease at the time of exercising said option shall be less than fifty years;
(ii) The extension must be for the purpose of mortgaging the leasehold interest;
(iii) Lessee shall not then be in default in any respect hereunder; and
(iv) The notice shall be accompanied by payment of a service charge not to exceed $50.

In every case of extension the annual rent hereunder payable for and during the first 30 days of said extended term shall be determined as follows:

(a) Compute to the nearest whole year 75% of the unexpired period of fixed rent at the commencement of said extended term;
(b) Multiply the number of years computed in (a) by the fixed annual rent in effect immediately prior to such extension;
(c) Deduct from 30 years the number of years computed in (a) and multiply that difference by the annual rent determined by mutual agreement of Lessor and Lessee within 30 days after such extension or by appraisal as hereinafter provided, and
(d) Add the amounts computed in (b) and (c) and divide that sum by 30, and this result rounded to the nearest dollar shall be the annual rent for the first 30 years of said extended term, provided that such rent shall not without the consent of Lessor be less than the annual rent in effect immediately prior to such extension.

The annual rent hereunder payable for and during the remaining period of said extended term shall be determined by mutual agreement of Lessor and Lessee, or if they fail to reach such agreement at least 90 days before the commencement of said period, by appraisal as hereinafter provided.

B. APPRAISAL. Whenever this lease provides that the annual rent payable by Lessee for any period of the term hereof shall be determined by appraisal, such rent shall be the product of the then prevailing rate of return for similar lands (but not less than the then prime rate of interest in Hawaii) multiplied by the then market value of the demised land exclusive of improvements thereon, first deducting from such market value the then unamortized cost to Lessee of $_____ as the prorata share attributable to said premises for off-site subdivision improvements such as streets, sewers, water facilities and utilities in the tract of which said premises constitute part, amortized on a straight-line basis over 75 years from the date of commencement of this lease, and such return and market value shall be determined by three recognized real estate appraisers, one to be appointed by each of the parties hereto, and Lessor and Lessee shall each promptly name one such appraiser and give written notice thereof to the other party, and in case of failure of either party so to do within ten days after such notice by the other the party naming the first appraiser may apply to any person then sitting as judge of the Circuit Court of the First Circuit of the State of Hawaii for appointment of a second appraiser, and the two appraisers thus appointed in either manner shall appoint a third appraiser, and in case of their failure so to do within ten days after appointment of the second appraiser either party may have the third appraiser appointed by such judge, and the three appraisers so appointed shall proceed to determine the matters in question, and the decision of said appraisers or a majority of them shall be final, conclusive and binding on both parties hereto, and Lessor and Lessee shall each pay one-half of all proper costs and expenses of such appraisal other than attorneys' fees.

C. CONDEMNATION. In case at any time or times during the term hereof the demised premises or any part thereof shall be taken or condemned by any authority having the power of eminent domain, then and in every such case the estate and interest of Lessee in the demised land so taken or condemned shall at once cease and determine upon acquisition by such

authority of title thereto or right to possession thereof, and Lessee shall not by reason of such taking or condemnation be entitled to any claim against Lessor or others for compensation or indemnity for leasehold interest, and all compensation and damages for or on account of any land shall be payable to and be the sole property of Lessor, and all compensation and damages for or on account of any improvements on the demised land shall be payable to and be the sole property of Lessee; provided, however, that in case only part of said premises shall be so taken or condemned, the rent thereafter payable for the remainder of said term shall be reduced in an amount determined by mutual agreement of Lessor and Lessee not later than 30 days thereafter or otherwise in the proportion that the area so taken bears to the area hereby demised, and if the remaining premises shall thereby become unsuitable for residential purposes appropriate for the neighborhood, Lessee shall have the option to surrender this lease within 30 days thereafter and be relieved of further performance hereunder, provided, further, that in case all said premises shall be taken or condemned or Lessee shall exercise said option to surrender this lease, Lessor shall pay to Lessee from and to the extent of the net proceeds payable for the demised land the then unamortized cost to Lessee for off-site subdivision improvements computed as hereinbefore provided in paragraph B, provided, further, that whenever requested so to do Lessee shall peaceably deliver up to Lessor, without any reduction in rent or option to surrender this lease, possession of such portion or portions of the demised land lying within _____ feet of any street boundary thereof at the commencement of said term as may hereafter be required, taken or condemned for any street widening.

D. ASSIGNMENTS. Lessee may assign or mortgage this lease without approval or consent of Lessor, and the assignee shall have the same rights and obligations hereunder as the original Lessee; provided, however, that no such assignment shall be effective to transfer any interest in this lease unless Lessor shall have received either a true executed copy of such assignment or written notice thereof, and also, in any case

other than assignment by way of mortgage or assignment to or by the Department of Housing and Urban Development or Veterans Administration or upon foreclosure of mortgage or assignment in lieu of foreclosure, payment of a reasonable service charge not to exceed $25 and the written undertaking of the assignee to perform all obligations of Lessee hereunder, which undertaking may be incorporated in such assignment. No such assignment shall release the assignor from further liability hereunder unless Lessor shall consent in writing to such assignment, and Lessor will not require payment of any money except said service charge for such consent nor withhold such consent unreasonably or because of the assignee's national origin, race, color or creed; provided, however, that any person acquiring the leasehold estate in consideration of the extinguishment of a debt secured by mortgage of this lease or through foreclosure sale, judicial or otherwise, shall be liable to perform the obligations imposed on Lessee by this lease only during the period such person has possession of ownership of the leasehold estate.

E. DEFEASANCE. This demise is upon this condition, that if Lessee shall fail to pay rent or any part thereof within 30 days after the same becomes due, whether the same shall or shall not have been legally demanded, or shall fail to observe or perform faithfully any of the other covenants or agreements herein contained and on the part of Lessee to be observed and performed and such default shall continue for 30 days after written notice thereof given to Lessee or mailed to his last known address, or if Lessee then owning this lease shall become bankrupt and fail to perform any of the covenants of Lessee hereunder or shall abandon said premises, Lessor may at once re-enter said premises or any part thereof in the name of the whole and, upon or without such entry, at its option terminate this lease, without service of notice or legal process and without prejudice to any other remedy or right of action for arrears of rent or for any preceding or other breach of contract, and in case of such termination all buildings and improvements on the demised land shall become and remain the property of Lessor. If this lease is recorded in the Bureau of

Conveyances or filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii, such termination may but need not necessarily be made effective by recording or filing in such place an affidavit thereof by Lessor or a judgment thereof by a court of competent jurisdiction.

F. PROTECTION OF MORTGAGEE. During the existence of any mortgage of this lease Lessor will not terminate this lease because of any default by Lessee hereunder or other cause whatsoever, if, within a period of 120 days after Lessor has mailed written notice of intention to terminate this lease for such cause to the mortgagee at its last known address and also, if such mortgage is insured by the Department of Housing and Urban Development or guaranteed by the Veterans Administration, to such Department or Administration, the mortgagee or such Department or Administration shall either cure such default or other cause or, if the same cannot be cured by the payment of money, shall undertake in writing to perform all the covenants of this lease capable of performance by it until such time as this lease shall be sold upon foreclosure pursuant to such mortgage, and in case of such undertaking Lessor will not terminate this lease within such further time as may be required by the mortgagee or such Administration to complete foreclosure of such mortgage or other remedy thereunder provided (a) that such remedy is pursued promptly and completed with due diligence, and (b) that Lessor is paid all rent and other charges accruing hereunder as the same become due, and upon foreclosure sale of this lease the time for performance of any obligation of Lessee then in default hereunder other than payment of money shall be extended by the time reasonably necessary to complete such performance with due diligence. Ownership by or for the same person of both the fee and leasehold estates in said premises shall not effect the merger thereof without the prior written consent of any mortgagee to such merger.

G. MISCELLANEOUS. Acceptance of rent by Lessor or its agent shall not be deemed to be a waiver by it of any breach by Lessee of any covenant herein contained or of Lessor's right of

re-entry for breach of condition. Lessor's waiver of any breach by Lessee shall not operate to extinguish the term, covenant or condition the breach whereof has been waived nor be deemed a waiver of Lessor's right to declare a forfeiture for any other breach thereof. Any approval or consent by Lessor required by any provision hereof shall not be capriciously or unreasonably withheld. The term "premises" herein shall include (except where such meaning would be clearly repugnant to the context) all buildings and improvements now or at any time hereafter built on the land hereby demised. The terms "Lessor" and "Lessee" herein, or any pronouns used in place thereof, shall mean and include the masculine or feminine, the singular or plural number, and jointly and severally individuals, firms or corporations, and their and each of their respective successors, executors, administrators and assigns, according to the context hereof.

IN WITNESS WHEREOF the parties hereto have executed these presents the day and year first above written.

Sample Land Lease Form

(Exhibit "C" to the Complaint filed in the United States District Court for the District of Hawaii on February 28, 1979)

Lease No. 10,523

THIS INDENTURE, made this 8th day of August, 1956, by and between George M. Collins, Frank E. Midkiff, Edwin P. Murray, Willson C. Moore and Atherton Richards, all of Honolulu, City and County of Honolulu, Territory of Hawaii, Trustees under the Will and of the Estate of Bernice P. Bishop, deceased, hereinafter called the "Lessors," of the first part, and Matsuo Takabuki and Ayako Takabuki, husband and wife, of Honolulu aforesaid, as tenants by the entirety, hereinafter called the "Lessee," of the second part,

WITNESSETH: That the Lessors, in consideration of the rent hereinafter reserved, and of the covenants herein contained and on the part of the Lessee to be observed and performed, do hereby demise and lease unto the Lessee:

ALL that certain piece or parcel of land (part of Apana 2 of L. C. Aw. 228, R. P. 7721 to Kaleiheana) situate at Kahala, Honolulu aforesaid, containing an area of 10,836 square feet and comprising Lot 14, Block 10, Kahala Neighborhood Subdivision Tract "H", as shown on File Plan 559 filed in the Hawaiian Registry of Conveyances, a copy of which is filed in the office of the Lessors as Bishop Estate Map 5320.

[CANCELLED]

TO HAVE AND TO HOLD the demised premises unto the Lessee from the first day of AUGUST, 1956, for the term of FIFTY-FIVE (55) YEARS thence next ensuing, the Lessee YIELDING AND PAYING therefor unto the Lessors for and during the first twenty-five (25) years of said term the annual rent of FOUR HUNDRED FORTY DOLLARS ($440.00), and for and during the remaining thirty (30) years of said term such annual rent as shall be mutually agreed upon by the Lessors and the Lessee, or in the event of failure to reach an agreement

such annual rent as shall be determined by arbitration as hereinafter provided, all said annual rents to be payable in equal semiannual payments each in advance of the first day of February and the first day of August in each and every year during the continuance of this lease, without any deduction, the first payment of $220.00 to be made on the execution of these presents.

AND THE LESSORS hereby covenant with the Lessee that, upon payment by the Lessee of the rent as aforesaid and upon observance and performance of the covenants by the Lessee hereinafter contained, the Lessee shall peaceably hold and enjoy the demised premises for the term hereby demised without hindrance or interruption by the Lessors or any other person or persons lawfully or equitably claiming by, through or under them; and, further, that the Lessee shall have the right at the end of said term to remove from the land hereby demised all buildings thereon, but such right will not exist in case the term granted by this lease shall be forfeited by reason of a breach of condition on the part of the Lessee.

AND THE LESSEE hereby covenants with the Lessors as follows:

1. PAYMENT OF RENT. That he (the Lessee) will pay the said rent in lawful currency of the United States of America at the office of the Lessors in Honolulu, in manner aforesaid, without any deduction and without any notice or demand;

2. PAYMENT OF TAXES, ASSESSMENTS, ETC. That he will also pay, when and as the same become due and payable, all taxes, rates, assessments, charges and other outgoings of every description to which the demised premises, or the Lessors or Lessee in respect thereof, are now or may during said term be assessed or become liable; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, the Lessee shall be required to pay only such installments as shall become due and payable during the term of this lease together with a like

number of installments of interest each in an amount computed by determining the total interest payable during the term hereof with respect to such assessment and dividing said total interest payable by the number of installments of principal to the paid on said assessment by the Lessee hereunder; provided, further, all assessments against said premises under Improvement Districts 88 and 90 shall be paid by the Lessors;

3. BUILD AND MAINTAIN FENCES, SEWERS, DRAINS, ETC. That he will, at his own expense, during the whole of the said term, make, build, maintain and repair all fences, sewers, drains, roads and sidewalks, which may be required by law to be made, built, maintained and repaired upon or adjoining or in connection with or for the use of the said premises or any part thereof;

4. REPAIR BUILDINGS; SANITARY REGULATIONS. That he will, at his own expense, from time to time and at all times during said term, keep all buildings and improvements now or hereafter built on the land hereby demised in good order, condition and repair, reasonable wear and use thereof and damage resulting from acts of God other than fire alone excepted; and also, during said term, will keep the said premises in a strictly clean and sanitary condition, and observe and perform all the laws, ordinances, rules and regulations relating to health and sanitation for the time being applicable to the said premises; and will indemnify and save harmless the Lessors and the estate and effects of the said Bernice P. Bishop against all actions, suits, claims and damages by whomsoever brought or made by reason of the failure to keep said buildings and improvements in good order, condition and repair, or by reason of the nonobservance or nonperformance of the said laws, ordinances, rules and regulations, or of this covenant;

5. INSPECTION OF PREMISES. That he will permit the Lessors and their agents, at all seasonable times during the said term, to enter the said premises and examine the state of repair and condition thereof and will repair and make good all defects required by the terms of this lease to be repaired and made good by him of which notice shall be given by the

Lessors, or their agents, within thirty days after the giving of such notice;

6. LESSEE TO ERECT DWELLING. That he will, at his own expense, within and during the first year of said term, erect and complete a single-family dwelling on the land hereby demised, which dwelling shall not exceed two (2) stories in height and shall contain a ground floor area of not less than Fifteen Hundred (1500) Square Feet, not including servants' quarters and garage, and shall cost, exclusive of outbuildings, not less than Fifteen Thousand Dollars ($15,000.00), the plans, specifications and plot plan showing the location of such dwelling to be first approved by the Lessors in writing and that the Lessors shall be the sole judges of the cost of said dwelling and as to what constitutes a dwelling and an outbuilding;

7. SINGLE-FAMILY DWELLING. That he will use or allow to be used the premises hereby demised solely for residential purposes and will not at any time during said term erect, place or maintain, or permit or suffer to be erected, placed or maintained, upon said premises more than one single-family dwelling (exclusive of outbuildings), which dwelling shall have been erected at a cost and in conformity with all of the requirements as set out in the covenant immediately preceding;

8. FIRE INSURANCE. That he will, at his own expense, at all times during the said term, keep insured all buildings now or hereafter erected on the land hereby demised against loss or damage by fire with extended coverage in the joint names of the Lessors, the Lessee and the Mortgagee, if any, as their respective interests may appear, in some insurance company approved by the Lessors in a sum not less than eighty per cent (80%) of the value of said buildings, and will for that purpose pay all premiums and sums of money payable in respect of such insurance, and will from time to time forthwith after receiving the same deposit with the Lessors the policy or policies of insurance or satisfactory evidence thereof and the receipt for every premium and sum of money so paid or satisfactory evidence thereof; and in case the said buildings be destroyed or damaged by fire or other such casualty, then and

as often as the same shall happen, all moneys received in respect of such insurance shall with all convenient speed be laid out by the Lessee in rebuilding, repairing or otherwise reinstating the buildings in a good and substantial manner according to the plan and elevation of the buildings so destroyed or damaged by fire or other such casualty, or according to such modified plan as shall be previously approved by the Lessors in writing; Provided, However, that in case the main dwelling on the demised premises shall, within the last five (5) years of said term, be destroyed by fire or other such casualty, or shall be so damaged by fire or other such casualty as to render it unfit for occupation or use, the Lessee shall have the option (a) to restore and rebuild the building as aforesaid or (b) to surrender this lease, which option to surrender shall be conditioned on the Lessee's removing as soon as practicable the building damaged by fire or other such casualty and the debris resulting from such fire or other such casualty and all other buildings (if any) which may be then on the land hereby demised and paying in advance to the Lessors the rent herein reserved accruing to the date of surrender, taxes for the whole year in which such damage or destruction by fire or other such casualty shall occur, and the cost of such surrender, it being understood that upon the surrender of this lease as aforesaid the Lessors shall assign their interrest in said policy or policies and the proceeds thereof to the Lessee;

9. MAINTENANCE OF PREMISES. That he will maintain the demised premises in a neat and attractive condition and in such manner as shall be approved by the Lessors or their agents and will keep planted with grass in a growing condition and free from weeds all land lying between the street property line or lines of the demised premises and the established curb line or lines;

10. MECHANICS' LIENS. That he will keep and maintain the demised premises free and clear of all mechanics' and materialmen's liens and in the event any lien is filed against the said premises or any improvements thereon, will indemnify and save harmless the Lessors from all loss, cost and expense

with respect thereto and will, prior to the construction of any improvements on the said premises, deposit with the Lessors a certificate or other evidence satisfactory to the Lessors that the contractor has obtained a bond with a surety approved by the Lessors, guaranteeing the construction of the improvements free and clear of all mechanics' and materialmen's liens, and he further agrees that, whenever the Lessors shall require, he will furnish a bond or other security approved by the Lessors guaranteeing the completion of any such improvements free and clear of all mechanics' and materialmen's liens;

11. BUILDING LINE. That he will not erect or maintain any building or structure or any fence or hedge of a greater height than four feet above the ground level outside of the building line or lines indicated on the sketch hereto attached and made part hereof;

12. TENEMENTS, ETC. That he will not permit or suffer any building or structure to be erected or placed on the land hereby demised for use as a tenement house, rooming house, or apartment house, nor use any building or structure on the land hereby demised as a tenement house, rooming house or apartment house, or for or in connection with the carrying on of any business or trade whatsoever;

13. WASTE, ETC. That he will not make or suffer any strip or waste or unlawful, improper or offensive use of the said premises, nor, without the consent in writing of the Lessors, make or suffer any addition to or alteration of any buildings now or at any time hereafter built on the land hereby demised;

14. ASSIGNMENT AND SUBLETTING. That he will not, without the consent in writing of the Lessors, assign this lease, nor sublet the said premises as a whole, or in part, excepting only that the Lessee without such consent *but upon giving notice to the Lessors as hereinafter provided may* assign this lease by way of mortgage to a recognized lending institution, and the Mortgagee, or the Federal Housing Administration, if it shall become the assignee, may cause this lease and any such mortgage, or any of them, to be filed for record in the Hawaiian Registry of Conveyances, or in the Office of the

Assistant Registrar of the Land Court of the Territory of Hawaii, and enforce any such mortgage and acquire title to the leasehold and any removable improvements in any lawful way, and rent the property pending foreclosure and acquisition and disposal of title; and the Mortgagee, or the Federal Housing Administration, if it shall become the assignee, may sell and assign this leashold and the improvements thereon, or may sublet the demised premises in whole, but no other or further assignment shall be made without the written consent of the Lessors. Any person acquiring the leashold estate in consideration of the extinguishment of the debt or through foreclosure sale, judicial or otherwise, or any party claiming by, through or under any such person, shall be liable to perform the obligations imposed upon the Lessee by this lease only during the period such person or party has possession or ownership of the leasehold estate. In the event this lease is assigned by way of mortgage as aforesaid, the Lessors further agree that they will not terminate this lease because of the failure on the part of the Lessee to observe or perform any of the covenants contained in this lease, or because of the bankruptcy or insolvency of the Lessee or because the Lessee shall abandon the said premises or suffer this lease or any estate or interest hereunder to be taken under any writ of execution or make an assignemnt for the benefit of creditors, if the Mortgagee, within sixty (60) days after receipt of written notice from the Lessors of intention to terminate this lease for any of such causes, shall either cure such default, if the default can be cured by the payment of money, or, if such is not the case, shall undertake in writing to perform all covenants of this lease capable of performance by the Mortgagee until such time as this lease shall be sold upon foreclosure pursuant to any such mortgage, or if assigned to the Federal Housing Administration, until this lease shall have been sold by said Administration. The Lessee shall notify the Lessors in writing in each case where such assignment is made by way of mortgage, giving the name and address of the Mortgagee, the date of the mortgage and the liber and page number of recordation or the Land Court document number thereof, such notification to be made within ten days after the completion of the recordation or registration of the mortgage;

15. LIVESTOCK, POULTRY AND LIQUOR. That he will not permit or suffer to be kept on the demised premises any livestock or poultry, nor permit or suffer the said premises to be used for or in connection with the manufacture or sale of ale, wine, beer, spirits or other alcoholic liquors;

16. ATTORNEY'S FEE AND EXPENSES. That in the event that the Lessors shall bring and sustain an action against the Lessee for breach of any covenant or condition herein contained or for the recovery of possession of the demised premises, the Lessee will pay to the Lessors all costs and expenses incurred by them in such action, including a reasonable attorney's fee;

17. SURRENDER. That at the end of the said term the Lessee will peaceably deliver up to the Lessors possession of the land hereby demised, together with all improvements upon or belonging to the same, by whomsoever made, in good repair, order and condition, except buildings as aforesaid;

For additional Covenant 18 see rider attached hereto and made a part hereof.

IT IS HEREBY MUTUALLY AGREED by and between the parties hereto as follows:

(a) That in the event the Lessors and the Lessee shall fail to reach an agreement before the end of the twenty-fifth year of said term in the matter of the annual rental payable hereunder for and during the last thirty years of said term, then and in such case the annual rental shall be the fair and reasonable annual rental of the land hereby demised (exclusive of buildings) as shall be determined by three arbitrators, who shall be recognized real estate appraisers, one to be appointed by each of the parties hereto, and either party may give to the other written notice of a desire to have an arbitration of the matter and name therein one of the arbitrators, whereupon the other party shall within ten (10) days after the receipt of such notice, name another arbitrator and give notice thereof to the party seeking arbitration, and, in case of failure so to do, the party

who has named an arbitrator shall have the right to apply to the person then sitting as the senior judge in service of the Circuit Court of the First Judicial Circuit, requesting him to appoint an arbitrator to represent the party so failing to appoint an arbitrator, and the two arbitrators thus appointed (in either manner) shall select and appoint a third arbitrator and give notice thereof to the Lessors and Lessee, and in the event that the two arbitrators so appointed shall, within ten (10) days after the naming of the second arbitrator, fail to appoint the third arbitrator, either party shall have the right to apply to such judge to appoint such third arbitrator, and the three arbitrators so appointed shall thereupon proceed to determine the matter in question, and the decision of any two of them shall be final, conclusive and binding upon both parties and judgment may be entered upon such award by the Circuit Court of the First Circuit unless the same shall be vacated, modified or corrected as provided in Chapter 165, Revised Laws of Hawaii 1945, or as the same may be amended or re-enacted from time to time, the provisions of which said statute shall apply hereto as fully as though incorporated herein; provided, however, that in the event two of the above three arbitrators shall fail to reach an agreement in the determination of the matter in question, the matter in question shall be decided by three new arbitrators, who shall likewise be recognized real estate appraisers, and who shall be appointed in the same manner aforesaid, and this process shall be repeated until a decision is finally reached by two of the arbitrators; and provided, further, that the parties hereto shall each pay for the services of its own appointee and one half of all other legitimate costs of said arbitration, other than attorneys' fees and witness fees;

(b) That in case at any time during said term the demised premises or any part thereof shall be taken or condemned for any public use by any authority having the power of eminent domain, then and in every such case the estate and interest of the Lessee in the property taken shall at once cease and determine, and all compensation payable or to be paid by reason of the taking of any land and improvements (other than

buildings) shall be payable to and be the sole property of the Lessors; and that such compensation as shall represent the value of any buildings erected upon the land shall be paid to the Lessee who thereupon (unless all of the demised premises shall have been so taken, or the Lessee shall exercise the option to surrender this lease as hereinafter provided) shall forthwith lay out and expend the money so received by him in rebuilding or repairing such buildings or in substituting therefor other buildings upon the remainder of the demised premises, the new dwelling when re-built or substituted shall cost and be fairly worth at least Fifteen Thousand Dollars ($15,000.00) and shall conform in every respect to all the requirements pertaining to the erection of a single-family dwelling as set out in preceding Covenant No. 6 of the Lessee, and in case the compensation received by the Lessee as aforesaid shall be insufficient for the purpose the Lessee shall make up the deficiency out of his own moneys; provided, however, that in case a part of said premises shall be taken or condemned, the rent thereafter payable for the remainder of the term shall be reduced (calculated to the nearest dollar) in the proportion that the area of land so taken shall bear to the area hereby demised, and the Lessors shall refund to the Lessee the unearned portion (if any) of the semiannual installment of the rent which shall have been paid in advance, and in the event that such partial taking or condemnation shall render the remainder of the demised premises unsuitable for residential purposes, the Lessee shall have the option to surrender this lease and be relieved of further performance hereunder, and in case the parties cannot agree that the remainder of the premises is unsuitable for residential purposes, then the matter shall be settled by arbitration in the same manner as provided above for the determination of rent for the latter portion of said term.

PROVIDED, HOWEVER, and this demise is upon this condition, that if the Lessee shall fail to pay the said rent or any part thereof within thirty days after the same becomes due, whether the same shall or shall not have been legally demanded, or shall become bankrupt, or shall fail faithfully to observe or perform

any of the covenants herein contained and on the part of the Lessee to be observed and performed, or shall abandon the said premises, the Lessors may at once without legal process re-enter the said premises or any part thereof in the name of the whole and, upon or without such entry, at their option terminate this lease or bring suit for summary possession against the Lessee without prior notice or demand and without prejudice to any other remedy or right of action for arrears of rent or for any preceding or other breach of contract, if, after written notice of any such default or breach of contract shall have been given by the Lessors to the Lessee, the Lessee shall have failed within thirty days after the receipt of such written notice to remedy such default or breach of contract;

AND IT IS HEREBY expressly agreed and declared that the acceptance of rent by the Lessors shall not be deemed to be a waiver by them of any breach by the Lessee of any covenant herein contained, nor of the Lessors' right of re-entry for breach of covenant; that the term "premises" wherever it appears herein includes and shall be deemed or taken to include (except where such meaning would be clearly repugnant to the context) all buildings and improvements now or at any time hereafter built on the land hereby demised, and that the term "Lessors" in these presents shall include the Lessors, their successors in trust and assigns, and also that the term "Lessee," or any pronoun used in place thereof, shall indicate and include the masculine or feminine, the singular or plural number, individuals, firms or corporations, and their and each of their respective successors, executors, administrators and permitted assigns, according to the context hereof.

IN WITNESS WHEREOF the parties hereto have executed this instrument in duplicate the day and year first before written.

[signatures omitted]

RIDER mentioned in and made part of Bishop Estate Lease No. 10,523 to MATSUO TAKABUKI and AYAKO TAKABUKI,

husband and wife, dated August 8, 1956, being an additional covenant numbered 18 of the Lessee therein:

18. *Underground Electric Utilities.* That he will reimburse the Lessors for the additional cost incurred by them in the installation of the electric utilities underground instead of overhead in the subdivision of which the demised land forms a part, such cost allocated to the demised land being the agreed sum of $480.00 which shall be paid by the Lessee to the Lessors in annual installments of $36.68 each in advance over a period of twenty (20) years beginning with the commencement date of this lease, on the first day of August in each and every year during the said twenty-year period, the first of such installments to be paid on the execution of these presents. The payment of such annual installments over said period of twenty years will amortize the said principal sum of $480.00 with interest computed at five per cent (5%) per annum.